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Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
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October 13, 2006

**SUPPLEMENTAL APPEAL BRIEF**

Dear Madam:

Attached herewith is an Supplemental Appeal Brief pursuant to 35 U.S.C. §134 and 37 C.F.R. §41.37 for the above-identified patent application in support of a Notice of Appeal filed at the US Patent and Trademark Office on September 27, 2006.

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## **I. REAL PARTY IN INTEREST**

The real party in interest in the above-entitled application is Koninklijke Philips Electronics N.V., Eindhoven, NL.

## **II. RELATED APPEALS AND INTERFERENCES**

The undersigned attorney/agent, the appellants, and the assignee are not aware of any related appeals or interferences that would directly affect, or be directly affected by, or have a bearing on the Board's decision in this pending appeal.

## **III. STATUS OF THE CLAIMS**

Claims 1-19 are pending and are all on appeal. The Office has rejected claims 1-19. None of the claims have been allowed. Claims 9 and 12 were amended and claim 19 was added during prosecution.

## **IV. STATUS OF AMENDMENTS**

No after final amendments have been submitted.

## **V. SUMMARY OF THE CLAIMED SUBJECT MATTER**

With respect to claim 1, a system (reference numerals 150 and 200) for enhanced programming channel-selection control within a television system capable of selectively displaying program input from a plurality of programming channels (FIGS 1 and 2, and claim 1), includes a selector 215 for selecting the programming input to process for display (Page 16, lines 3-16), a timer 237 for timing the amount of time each channel is selected for display (Page 19, lines 7-17), a database 250 for recording channel-selection durations, (Page 20, lines 16-18, and page 22, lines 2-6), and a processor 230 in communication with the database 250 for periodically compiling a program selection control list, wherein the program selection control list includes channels selected and assigned weight values relative to other listed channels, said weighted values calculated according to a pre-determined algorithm from the

channel-selection durations stored on the database (Page 18, lines 14-17, page 20, line 16 – page 21, line 3, and page 23, lines 14-20).

With respect to claim 2, a higher weight value is assigned to channels having greater timed viewing durations and wherein the channels listed on the program selection control list are listed beginning with the channel having the highest relative weight value (Page 7, lines 11-17, page 7, line 20 p- page 8, line 2, and page 23, line 14 – page 24, line 1).

With respect to claim 3, the system further includes a viewer preference profile (Page 21, lines 4-6, and page 24, lines 1-9).

With respect to claim 9, the system is configurable for individual use by more than one viewer, and wherein the processor uses a viewer identity as a factor in determining which program selection control list to use (Page 11, lines 18-21, page 20, lines 16-21, page 21, lines 4-16, and page 25, lines 17-21).

With respect to claim 1, a method for enhancing channel selection in a television system capable of displaying a program selected from a plurality of available program channels (Figure 3, page 22, lines 7-9), includes maintaining a viewing-history record of the amount of time each displayed program channel is displayed by the television system (Page 22, line 18 – page 23, line 11), ranking each displayed channel relative to the other displayed channels according to the display time in the viewing-history record (Page 23, lines 14-20), and creating a program selection control list for one of a plurality of viewers based on the displayed channel ranking (Page 24, line 16 – page 25, line 9).

## **VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

Whether claims 1-8 and 10-11 are anticipated under 35 U.S.C. 102(e) by Bates et al. (US 6,721,953).

Whether claims 9 and 12-19 are unpatentable under 35 U.S.C. 103(a) in view of Bates et al.

## VII. ARGUMENTS

### A. Rejection under 35 U.S.C. 102(e) by US 6,721,953 to Bates et al.

Claims 1-8, 10, and 11 stand rejected under 35 U.S.C. 102(e) as anticipated by Bates et al. (US 6,721,953).

#### *i. CLAIMS 1, 4-8, 10, and 11*

With respect to independent **claim 1**, the Office asserts that Bates et al. teaches a timer for timing the amount of time each channel is selected for display and a database for recording channel-selection durations, as recited in the subject claim, at column 7, line 61 – column 8, line 33, and FIGURE 8. However, this section and Figure of Bates et al. does not teach or suggest these claimed aspects.

With reference to Bates et al. FIGURE 5, Bates et al. discloses setting an initial channel and starting a timer to measure the amount of time or time duration the channel is viewed by a user. (Column 7, lines 7-12). When a channel change event is received (when the channel is changed), the time duration measured by the timer is compared with a threshold time duration to determine whether program information for the program just viewed should be added to the favorite program table 50. (Column 7, lines 22-31). The favorite program table 50 includes a channel identifier 54, a time slot identifier 58 (e.g., indicating the program is on from 8:00 am to 8:30 am), and a watched count field 60 that identifies a number of times a program is watched. (Column 6, lines 6-15 and FIGURE 3). The new channel is then set as the current channel and the timer is re-started to monitor the viewing time duration of the new channel. (Column 7, lines 32-35). This process of re-starting the timer is repeated upon receiving subsequent channel change events. (Column 7, lines 35-36).

Bates et al., column 7, line 61, through column 8, line 33, discusses in greater detail the above routine (referred to as process favorite routine 122 in Bates et al.) for determining whether corresponding program information is added to the favorite program table 50. In this section, Bates et al. discloses determining whether a channel was viewed for sufficient time duration to deem the program a “favorite” program. (Column 7, line 64 – column 8, line 1).

This is achieved through the above-discussed timer. If the timer has not exceeded the threshold, the routine 122 terminates. (Column 8, lines 5-7). If the timer exceeds the threshold, then either a new record is created in the favorite program table 50 and the count field 60 is initially set to one or the count field 60 of an existing record 53 is incremented by one. (Column 8, lines 7-23). In either instance, the timer is re-started. (Column 7, lines 32-35).

However, Bates et al. does not teach or suggest recording the time duration measured by the timer in a database as recited in the subject claim. At most, a time slot (e.g., 8:00-8:30) indicating a start and end time for the program is entered into the table 50. (Column 6, lines 54-56). However, the time slot of the program provides no indication of the duration of time that the program was viewed by the viewer.

The discussion of FIGURE 8 of Bates et al. discloses a re-order data routine 156. The re-order data routine 156 re-orders the records 53 in the favorite program records table 50 based in the value of the count in the above noted count field 60. (Column 8, lines 65-67). As previously described, the count field 60 is incremented when the timer exceeds the threshold. (Column 8, lines 19-23). For each program record in the favorite program table 50, it is determined whether the channel field 54 matches the channel fields in a program record in downloaded program data. (Column, lines 10-13). The downloaded program data includes electronic program information, including a channel, program name, and program start and end times, which identify the time slot. (Column 6, lines 39-65). Downloaded program data and a matching favorite program record are stored in a results file, organized by frequency of access as determined by the count value in the count field 50. (Column 9, lines 15-25). However, this section of Bates et al. does not contemplate recording channel-selection durations in a database as recited in the subject claim.

The Office further asserts that Bates et al. teaches a processor in communication with the database for periodically compiling a program selection control list that includes channels selected and assigned weight values relative to other listed channels according to a pre-determined algorithm from the channel-selection durations stored on the database.

As discussed *supra*, FIGURE 3 of Bates et al. describes the favorite program table 50 and column 7, line 61, to column 8, line 33, describes the routine 122 for adding program records to the favorite program table 50. Also discussed *supra*, FIGURE 8 teaches re-ordering the programs in the table 50 based on a program viewing count, and generating a results file, which includes each favorite program along with corresponding program information sorted by the view count. Hence, Bates et al. teaches sorting favorite programs (not channels) based on program view count. However, Bates et al. does not teach or suggest assigning channel weight values as recited in the subject claim. Furthermore, claim 1 recites that the channel weight values are based on the channel-selection durations, which Bates et al. does not teach or suggest, as previously discussed,

The Office further asserts that Bates et al. teaches a selector for selecting the programming input to process for display. The Office submits that this is taught in FIGURES 1 and 2 and, in particular, at column 5, lines 15-17. However, this section of Bates et al. discloses that the interface 40 behaves as a conduit through which a user enters input and does not teach or suggest that the interface 40 is a selector that selects the programming input to process for display.

**Claims 4-8, 10 and 11** depend from claim 1 and, by virtue of their dependency, are allowable for at least the reasons discussed above in connection with claim 1.

In view of the above, it is respectfully requested that the rejection of claims 1, 4-8, 10, and 11 be withdrawn.

*ii. CLAIM 2*

**Claim 2** (which depends from claim 1) recites that a higher weight value is assigned to channels having greater timed viewing durations and that the channels listed on the program selection control list are listed beginning with the channel having the highest relative weight value. The Office contends that column 10, lines 1-16, and column 13, lines 14-37, teach such aspects. However, these sections of Bates et al. do not teach or suggest such aspects.

In particular, column 10, lines 1-16, discloses that the favorite program records stored in the results file are first sorted by time slot and then by relative frequency of access (or the count value). Then the scroll rate, which is the rate at which program information is presented to the viewer (See Abstract), is progressively incremented for each subsequent program record in each time slot, which ensures that each additional program in the same time slot scrolls at a faster rate. Column 13, lines 14-37, merely discusses various alternate embodiments. However, these sections Bates et al. are silent regarding assigning higher weight values to channels based on viewing durations and sorting the channels based on such weights as recited in claim 2.

Thus, this rejection should be withdrawn.

*iii. CLAIM 3*

**Claim 3** (which depends from claim 1) recites that the system further includes a viewer preference profile. In the Office Action, it is asserted that Bates et al. teaches such aspects, and FIGURE 8 and column 7, l. 61 – column 8, l. 33, are referenced to support this assertion. However, these sections of Bates et al. do not teach or suggest such aspects. As discussed above, FIGURE 8 describes a re-order data routine 156 and column 7, l. 61 – column 8, l. 33, describes a process favorite routine 122. These routines are used to determine whether to add program information to the table 50 and to sort the data in the table 50. Thus, rather than being a viewer preference profile, the sorted or unsorted table 50 is a listing of program records automatically chosen based on a timer threshold. Therefore, the rejection of claim 3 should be withdrawn

B. Rejection under 35 U.S.C. 103(a) in view of Bates et al. (US 6,721,953)

Claims 9, and 12-19 stand rejected under 35 U.S.C. 103(a) as being unpatentable in view of Bates et al.

*i. CLAIM 9*

**Claim 9** (which indirectly depends from claim 1) recites that the system is configurable for individual use by more than one viewer and that the processor uses a viewer identity as a factor in determining which program selection control list to use. In the Office Action, it is conceded that Bates et al. does not teach or suggest such aspects. The Office then asserts that it would be obvious to duplicate the user and/or system and that doing so would render the claimed invention. Applicant respectfully disagrees.

Duplicating the user and/or system would result in a change in the principle of operation of Bates et al. since Bates et al. teaches a system/method for dynamically adjusting program information scroll rates without regard to the user's identity. Thus, Bates et al. does not provide the requisite motivation and alone is not sufficient to render the claims *prima facie* obvious. MPEP §2143.01 ("The Proposed Modification Cannot Change the Principle of Operation of a Reference").

In addition, duplicating the user and/or system would not make the system of Bates et al. any more configurable for individual use by more than one viewer (as recited in claim 9) than before such duplication. Rather, it would result in multiple identical systems that do not contemplate user identity, wherein each system would be no more capable of being configured as claimed as the original system of Bates et al. Thus, the purported modification would not render all the claimed aspects and, hence, does not make obvious the subject claim. MPEP §2143 (To establish a *prima facie* case of obviousness, ... the prior art reference (or references when combined) must teach or suggest all the claim limitations.).

In view of the foregoing, this rejection should be withdrawn.

*ii. CLAIMS 12-19*

With respect to independent **claim 12**, Bates et al. does not teach or suggest maintaining a history of the amount of time each displayed channel is displayed or a creating a program selection control list for one of a plurality viewers as claimed, as described above. For instance, Bates et al. discloses re-starting a timer when a channel is changed and storing start and end time slot (e.g., 8:00-8:30) for the programs in the table 50, but does not teach or

suggest recording the amount of time each displayed channel is displayed as recited in the subject claim. In addition, Bates et al. does not account for different users. Hence, Bates et al. cannot teach or suggest claim 12. **Claims 13-19** depend from claim 12 and, by virtue of their dependency, are allowable for at least the reasons discussed above in connection with claim 12. Therefore, the rejection of claims 12-19 should be withdrawn.

### VIII. CONCLUSION

In view of the foregoing, it is submitted that claims 1-19 distinguish patentably and non-obviously over the prior art of record, and reversal of the rejection of claims 1-19 is respectfully requested.

Respectfully submitted,

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## IX. CLAIM APPENDIX

1. In a television system capable of selectively displaying program input from a plurality of programming channels, a system for enhanced programming channel-selection control, said system comprising:
  - a selector for selecting the programming input to process for display;
  - a timer for timing the amount of time each channel is selected for display;
  - a database for recording channel-selection durations;
  - a processor in communication with the database for periodically compiling a program selection control list, wherein the program selection control list includes channels selected and assigned weight values relative to other listed channels, said weighted values calculated according to a pre-determined algorithm from the channel-selection durations stored on the database.
2. The system of claim 1, wherein a higher weight value is assigned to channels having greater timed viewing durations and wherein the channels listed on the program selection control list are listed beginning with the channel having the highest relative weight value.
3. The system of claim 1, further comprising a viewer preference profile.
4. The system of claim 3, wherein the viewer preference profile comprises automatically generated viewer-preference information.
5. The system of claim 3, wherein the processor generates an adjusted program selection control list by applying information stored on the viewer preference profile to the program selection control list.

6. The system of claim 1, wherein the system is capable of generating and storing a plurality of program selection control lists.
7. The system of claim 6, wherein the processor determines which of the program selection control lists to apply to the channel selection process.
8. The system of claim 7, further comprising a clock for determining the day and time, and wherein the processor uses clock data as a factor in determining which program selection control list to use.
9. The system of claim 7, wherein the system is configurable for individual use by more than one viewer, and wherein the processor uses a viewer identity as a factor in determining which program selection control list to use.
10. The system of claim 1, wherein the selector uses the program selection control list to determine which programming input to select for display.
11. The system of claim 10, wherein the selector successively uses a plurality of program selection control lists to determine which programming input to select for display.
12. A method for enhancing channel selection in a television system capable of displaying a program selected from a plurality of available program channels, said method comprising:
  - maintaining a viewing-history record of the amount of time each displayed program channel is displayed by the television system;
  - ranking each displayed channel relative to the other displayed channels according to the display time in the viewing-history record; and
  - creating a program selection control list for one of a plurality of viewers based on the

displayed channel ranking.

13. The method of claim 12, wherein the viewing-history record also includes information relating to the time of day during which the displayed program was displayed.
14. The method of claim 12, wherein the viewing-history record also includes information relating to the day of the week during which the displayed program was displayed.
15. The method of claim 12, wherein the step of creating a program selection control list comprises creating a plurality of program selection control lists.
16. The method of claim 15, further comprising the step of determining, upon receiving a control list invoke signal, the appropriate program selection control list to use.
17. The method of claim 12, further comprising the step of updating the program selection control list.
18. The method of claim 17, further comprising the step of creating a preference profile based on viewer input, the profile containing an update mode selection, and wherein the program selection control list is updated according to the selected update mode.
19. The method of claim 12, further comprising pausing the maintenance of the viewing-history record.

**X. EVIDENCE APPENDIX**

None.

**XI. RELATED PROCEEDINGS APPENDIX**

None known to undersigned attorney/agent.